IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8341 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DISTRICT PANCHAYAT JUNAGADH - Petitioner(s)

Versus

MADHUSUDAN H PANDYA - Respondent(s)

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Appearance :

MR JITENDRA MALKAN for Petitioner(s) : 1,
MR MD RANA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 13/01/2006

ORAL JUDGMENT

1. Heard learned Advocate, Mr.J.M.Malkan, appearing on behalf of petitioner and learned Advocate, Mr.M.D.Rana, appearing on behalf of respondent.

2. In present petition, petitioner has challenged order passed by Labour Court, Junagadh in Recovery Application No.166 of 1997 dated 10th June,2004. The Labour Court has granted salary of interim period from February,1991 to 13th December,1993 to respondent with increments with direction to pay within a period of 30 days from date of order.

3. Learned Advocate, Mr.Malkan, submitted that during this period of 1991 to 1993, the respondent was not remained in service and he was not in duty. He remained absent, no leave was sanctioned by petitioner and no benefit is entitled according to Service Rules of petitioner. He also submitted that respondent remained absent from service and not work during this period and even though, Labour Court has granted full salary of this interim period in favour of respondent without prior adjudication of dispute in question by Industrial Tribunal. Therefore, he submitted that respondent not having pre-existing right to receive such benefit which has been

adjudicated by Labour Court for which Labour Court having no jurisdiction while deciding Recovery Application under Section 33-C(2) of the I.D.Act,1947. He relied on decision of Apex Court in case of Municipal Corporation of Delhi Vs. Ganesh Razak and Anr. reported in 1995 (1) LLJ 395 SC and also decision in case of Naranji Peraji Transport Co. Vs. Ramnikbhai B.Waghela, 1998 (1) GLH 88.

4. Learned Advocate, Mr.M.D.Rana, appearing for respondent has vehemently opposed this submissions and submitted that when workman remained in service, no disciplinary action has been taken against respondent by petitioner and no memo or charge-sheet has been served, naturally the absence of respondent has been condoned by petitioner and for that, respondent workman is entitled the salary of interim period. Therefore, pre-existing right of respondent has rightly been adjudicated by Labour Court and granted the salary of interim period. For that, Labour Court has not committed any error and, therefore, no interference is required by this Court

under Article 227 of the Constitution of India.

5. I have considered the submissions of both the learned Advocates. It is a clear case of no jurisdiction. The Labour Court has no jurisdiction under Section 33-C(2) to pass such kind of order without prior adjudication by Industrial forum. When claim of respondent was opposed / objected by petitioner, then, it require adjudication. The Labour Court under Section 33-C(2) have no jurisdiction to adjudicate any issue when it was objected by employer. This being out side the jurisdiction of the Labour Court and, therefore, when respondent workman not remained in service, he remained absent, no sick leave and leave has been granted in favour of respondent by petitioner, then, there was no pre-existing right which can be encahsed by respondent under machinery of Section 33-C(2) of I.D.Act,1947. Therefore, considering decision of Apex Court in case of Municipal Corporation of Delhi Vs. Ganesh Razak and Anr. (Supra), according to my opinion, Labour Court has committed gross error in

adjudicating the issue by exercising the power under Section 33-C(2) of the I.D.Act,1947 and, therefore, the order passed by Labour Court in Recovery Application No.116 of 1997 dated 10th June,2004 is hereby quashed and set aside. Rule is made absolute with no order as to costs.

(H.K.RATHOD,J.)

(vipul)